



04/08/97

IN THE UNITED STATES PATENT OFFICE

PK
4-21-97

In re patent application of:

Before the Examiner

#14

Thomas Zdeblick, M.D. et al.

D. Isabella

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20231 on APRIL 4, 1997

(Date of Deposit)

MICHAEL D. BECK

Name of Registered Representative

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Signature

April 4, 1997

Date of Signature

Serial No. 08/411,017

Group Art Unit 3308

Filed March 27, 1995

April 4, 1997

INTERBODY FUSION DEVICE
AND METHOD FOR
RESTORATION OF NORMAL
SPINAL ANATOMY

RESPONSE AFTER FINAL ACTION AND
SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

Hon. Assistant Secretary and
 Commissioner of Patents and Trademarks
 Washington, D.C. 20231

RECEIVED

APR 17 1997

Sir:

GROUP 3300

In response to the Office Action dated February 19, 1997, please consider the following. Enclosed is our check in the amount of \$230.00. Additionally, please provide any extensions of time which may be necessary and charge any additional fees which may be due to Deposit Account No. 23-3030, but not to include any payment of issue fees.

In the latest Office Action, each of claims 1-14 was provisionally rejected under the judicially created doctrine of double patenting over the claims of co-pending application No. 08/413,353. A Notice of Allowance has been received in this co-pending application.

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In accordance with 37 C.F.R. §1.321, a Terminal Disclaimer executed by the registered attorney of record is enclosed. This Terminal Disclaimer should obviate the double patenting rejection of the claims in the present application in view of the soon to be issued co-pending application. It is therefore believed that the present application is in condition for allowance.

Furthermore, in accordance with applicants' duty of candor and disclosure, four references are being cited, namely:

<u>Patent Number</u>	<u>Patentee</u>	<u>Issue Date</u>
5,593,409	Michelson	Jan. 14, 1997
D377,095	Michelson	Dec. 31, 1996
D377,096	Michelson	Dec. 31, 1996
4,877,020	Vich	Oct. 31, 1989

The Vich patent, 4,877,020, was made of record in the co-pending application. It was only recently discovered on a review of the present file that it did not appear that this '020 patent was cited during the prosecution of the present application. The Vich '020 patent simply shows a threaded bone dowel, and is believed to be duplicative in pertinent parts to the previously cited Michelson patent no. 5,015,247.

The three additional patents in the name of Michelson were recently issued and only came to applicants' attention after receipt of the Final Office Action. The two design patents are based upon the disclosure of the later patent 5,593,409. The '409 patent shows a non-threaded, push-in fusion implant. The disclosure in this patent specifically distinguishes its push-in implant from the threaded fusion device contemplated by the earlier Michelson '247 patent and by the present claimed invention.

The Michelson design patent 377,096, as well as Figures 23-39 of the '409 patent, show a non-threaded, push-in fusion device having flattened sidewalls. The implant in the '409 patent includes flattened sidewalls so that two implants can be disposed immediately adjacent each other, as depicted in FIG. 25 of the '409 patent. As discussed throughout the '409 patent, the disclosed device does not contemplate including external threads in the manner defined in the claims of the present application. It is therefore believed that these later Michelson patents are merely cumulative in view of other cited art of record, for example the patent of Kuntz, 4,349,921, Ma et al., 3,848,601, some of the patents of Brantigan, Steffee, 5,443,514, and Kushlich, 5,458,638.

Applicants hereby petition for consideration of the above identified references and the attached Form 1449. Since these references only came to applicants' attention after receipt of the Final Office Action dated February 19, 1997, no knowledge of these references was had more than three months prior to the filing of the present statement. Consequently, the requirements of 37 C.F.R. §1.97(d) have been met and consideration of this Information Disclosure Statement is appropriate.

These references were not earlier cited because they only recently issued. Nevertheless, it is believed that these references are merely cumulative in view of prior art already of record and that the references do not bear adversely on the patentability of claims 1-14. Consequently, the indication that these claims 1-14 of the present application would be allowable once the double patenting rejection is overcome, should remain. The submission of a Terminal Disclaimer with this Response should place this application in condition for immediate allowance. Action toward that end is hereby solicited.

Respectfully submitted,

Michael D. Beck ✓

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